SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 295

CHARLES C. DIGGS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN

Respondent

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests a rehearing on the Petition for Writ of Certiorari heretofore filed by him, and suggests that consideration be given to the recent decision of this Court of January 5, 1948, *Sealfon* v. *United States,* 332 U. S. 575, which was not previously cited.

The criminal charge on which petitioner was convicted was that he, a state senator, conspired with others corruptly to affect and influence legislation (302). The statute of Michigan upon which such conspiracy charges are based states that:

> "Any person who shall commit any indictable offense at common law, for the punishment of which no pro-

vision is expressly made by any statute of this state, shall be guilty of a felony * * *."

Section 28.773, Mich. Stat. Ann. (Section 505, Mich. Penal Code).

Assuming the truth of the charge made, petitioner was guilty of receiving a bribe as a public officer, punishable by Sections 2.61 and 28.312, Mich. Stat. Ann., and was guilty of aiding and abetting others participating in the corruption of legislative action punishable by Section 28.979, Mich. Stat. Ann., which makes all accessories liable as principals.

Petitioner's contention is, therefore, that his acts being punishable under other statutes of the state cannot be subject to the prohibition of Section 505 of the Penal Code. This question was presented in petitioner's application for writ of certiorari but petitioner did not present, in support of his argument, the above mentioned case, *Sealfon* v. *United States*, 332 U. S. 575, which holds that on the principle of *res adjudicata* a defendant cannot first be charged with conspiracy to defraud and then later charged with the fraud which was the substantive offense of the conspiracy.

On the principle of that case, the conspiracy charge and the substantive charge were legally identical and petitioner should have been charged with bribery and aiding and abetting under Sections 2.61, 28.312 and 28.979. *Ipso facto*, Section 505 of the Penal Code was not applicable to him.

If no laws of Michigan defined the offense, petitioner's conviction was clearly without due process of law.

Stewart v. *Michigan*, 232 U. S. 665.

The *Sealfon* case first came to the attention of petitioner's counsel in October, 1948, after the petition for writ of certiorari was filed with this Court, when presented to a trial court in the State of Michigan as the basis for a motion to quash an indictment in somewhat similar circumstance.

Although that motion was denied it is now pending on appeal to the Supreme Court of Michigan. Petitioner believes the application of the rule thus laid down by this Court should be clarified in its relation to cases such as the one at bar.

Petitioner submits that this Court should reconsider his application for writ of certiorari.

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Certificate of Counsel

Counsel for the above named petitioner, certify that the foregoing application is presented in good faith and not for the purpose of delay, and that such application is for the sole purpose of calling the attention of the court to its decision in *Sealfon* v. *United States*, 332 U. S. 575, which counsel believes to have important bearing upon the issue involved and which decision was previously overlooked by counsel.

GEORGE STONE,
JAMES A. COBB.